

**SUPREME COURT
OF THE
STATE OF CONNECTICUT**

SC 20506

**RAINBOW HOUSING CORPORATION, ET AL.,
Plaintiffs-Appellees,**

v.

**TOWN OF CROMWELL,
Defendant-Appellant.**

**BRIEF OF AMICI
CONNECTICUT LEGAL RIGHTS PROJECT, INC.
CONNECTICUT FAIR HOUSING CENTER**

ATTORNEY FOR AMICI

Kathleen M. Flaherty, Juris No. 413221
Connecticut Legal Rights Project
CVH – Beers Hall 2nd Floor
P.O. Box 351 – Silver Street
Middletown, CT 06457
(860) 262-5033
(860) 262-5035
kflaherty@clrp.org

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUE.....	iii
STATEMENT OF INTEREST.....	iv
ARGUMENT	1

1. Any reading of General Statutes § 12-81 (7) that would permit a municipality to assess property taxes on an operator of a supervised apartment program that includes services rendered by contract with the state Department of Mental Health and Addiction Services for people who suffer from severe mental illness would result in the perpetuation of ongoing discrimination against people with disabilities and the unnecessary institutionalization of people with disabilities. 1
2. Any reading of General Statutes § 12-81 (7) that would permit a municipality to assess property taxes on an operator of a supervised apartment program that includes services rendered by contract with the state Department of Mental Health and Addiction Services for people who suffer from severe mental illness is contrary to the public policy of Connecticut. 5

CONCLUSION	8
------------------	---

TABLE OF AUTHORITIES

FEDERAL CASES

Gilead Cmty. Servs., Inc. v. Town of Cromwell,
No. 3:17-CV-627 (VAB), 2019 WL 7037795 (D.Conn. Dec. 20, 2019) ...1, 2

McCulloch v. Maryland,
17 U.S. 316 (1819)4

Olmstead v. L.C. ex rel. Zimring,
527 U.S. 581 (1999)3, 4, 7

STATUTES AND OTHER AUTHORITIES

Conn. Gen. Stat. § 12-81v, 1, 5, 8

Conn. Gen. Stat. § 17a-540v, 6

Conn. Gen. Stat. § 17a-542v, 6

Conn. Gen. Stat. § 17a-5496

STATEMENT OF THE ISSUE

Did the trial court properly conclude that the plaintiffs, who operate a supervised apartment program that includes services rendered by contract with the state Department of Mental Health and Addiction Services for men who suffer from severe mental illness, were entitled to a municipal property tax exemption under General Statutes § 12-81 (7) because the subject property was not "housing subsidized, in whole or in part, by . . . state . . . government" and qualified as "temporary housing" under the statute?

STATEMENT OF INTEREST OF AMICI CURIAE

Connecticut Legal Rights Project (CLRP) submits this *amicus curiae* brief in response to the Court's invitation dated October 28, 2020, on behalf of itself and the Connecticut Fair Housing Center (CHFC). CLRP is a statewide legal services organization whose clients are low-income people with psychiatric disabilities. CLRP was created by a federal court order and consent decree in 1989 to serve individuals who were receiving psychiatric treatment as inpatients in state-operated facilities and provide them with their constitutional right to access to the courts. CLRP also provides legal representation to low-income people with psychiatric disabilities who reside in the community. CLRP's representation includes assisting its clients with housing, treatment rights, civil rights, benefits, employment discrimination and public accommodations.

The **Connecticut Fair Housing Center** ("CFHC") is a nonprofit organization dedicated to ensuring that all people have equal access to housing opportunities in Connecticut. CFHC provides investigative and legal services to those who believe they have been the victims of housing discrimination and additionally works with state and local government, as well as housing providers, to promote compliance with state and federal fair housing laws. CFHC seeks to eliminate segregation in housing and promote residential integration. CFHC also undertakes public educational campaigns to address housing discrimination and counteract bias based on stereotypes about members of protected classes and to promote the benefits of residential diversity. CFHC represents individuals and organization seeking access to all communities for people with disabilities including those who benefit from living in group homes.

CLRP represents clients residing at state-operated inpatient psychiatric facilities to protect their legal rights under the Patients' Bill of Rights (General Statutes §§ 17a-540 et seq). One of the fundamental rights of all patients at all inpatient psychiatric facilities in the state is discharge planning that begins upon admission to the facility General Statute § 17a-542.

It is a core tenet of CLRP's mission to represent clients in accordance with their expressed preferences in administrative, judicial and legislative venues to enforce their legal rights and assure that personal choices are respected and individual self-determination is protected. CLRP develops and supports initiatives to promote full community integration which maximizes opportunities for independence and self-sufficiency. Choosing where one will live is an essential element of participating in a community. Connecticut's 169 cities and towns must not be permitted to use the denial of a property tax exemption to deny people the opportunity to live in the communities of their choice.

One of the most significant barriers to discharge is lack of resources in the community-based system of care. This case has ramifications for the delivery of mental health services to low-income Connecticut residents who are eligible for services from the State of Connecticut Department of Mental Health and Addiction Services (DMHAS) or the private non-profit providers with whom DMHAS contracts to provide such services. A decision which permits municipalities to deny tax exemptions to operators of mental health programs funded by DMHAS which include a residential component would impact distribution of those services in high-opportunity cities and towns. There will be a reduction in the number of providers who will be able to afford to provide those mental health

services, regardless of location, if the statute is interpreted to allow municipalities to deny property tax exemptions to service providers who own the real property in which the recipients of their services are housed.

CLRP and CFHC's interest in this matter is to preserve the trial court's decision, which correctly interpreted § 12-81(7)(B). CLRP and CFHC answer the Court's question "Did the trial court properly conclude that the plaintiffs, who operate a supervised apartment program that includes services rendered by contract with the state Department of Mental Health and Addiction Services for men who suffer from severe mental illness, were entitled to a municipal property tax exemption under General Statutes § 12-81 (7) because the subject property was not "housing subsidized, in whole or in part, by . . . state . . . government" and qualified as "temporary housing" under the statute?" in the affirmative.

As we will explain more fully in the brief below, any other interpretation of the statute would result in the state sanctioning the perpetuation of ongoing discrimination against people with disabilities and the unnecessary institutionalization of people with disabilities through tax policy. Any other interpretation of the statute would be contrary to the public policy of the State of Connecticut.

ARGUMENT¹

1. **Any reading of General Statutes § 12-81 (7) that would permit a municipality to assess property taxes on an operator of a supervised apartment program that includes services rendered by contract with the State Department of Mental Health and Addiction Services for people who suffer from severe mental illness would result in the perpetuation of ongoing discrimination against people with disabilities and the unnecessary institutionalization of people with disabilities.**

This case presents clearly what systemic discrimination against people with mental health conditions looks like. While this case may appear on its surface to be a dispute solely centered on interpretation of a statute regarding municipal tax exemptions, it must be set within its proper context. The action that the Defendant Town of Cromwell took in denying a property tax exemption to the plaintiffs was part of a pattern and practice that demonstrated the town's discriminatory intent to ensure that a particular supervised apartment program including services rendered under contract with the state Department of Mental Health and Addiction Services (DMHAS) to the male residents of the program would not operate in their town.

This Court should take notice of the litigation pending in federal court between the parties regarding another property owned by the plaintiffs. See *Gilead Cmty. Servs. v. Town of Cromwell*, No. 3:17-CV-627 (VAB), 2019 WL 7037795 (D. Conn. Dec. 20, 2019). It is only within the context of the dispute in that case that this court can understand why, despite the fact that the Town of Cromwell recognized the property at 461 Main Street as tax-exempt from 2006 through

¹ Neither counsel for either party in this case wrote this brief in whole or in part and neither party contributed to the cost of the preparation or submission of this brief.

October 1, 2017, the Town decided to deny the tax exemption when Rainbow Housing Corporation submitted their quadrennial application in 2017.

Judge Bolden's ruling and order on the parties' cross motions for summary judgment includes a detailed timeline of the events that took place in Cromwell starting in 2014, when DMHAS first approved an application from Gilead Community Services to operate a new community residence for men with disabilities.

From the beginning, it was clear that the town's official position with regard to this new community residence for men with disabilities was one of opposition. Among the ways in which they demonstrated their hostility both to the location and the very existence of this new community residence program for men with disabilities was to hold a public forum at the Town Hall. The author of this brief was in the audience at that forum. The author of this brief was one of the "Two people [who] spoke in support of the group home, but they were shouted over by the crowd."² The four-hour forum was a demonstration of explicit bias and discriminatory animus against people with disabilities. Each and every elected official present, from both sides of the political aisle, fostered and stoked the resentment and bias, pouring gasoline on the flame, rather than making even a token effort at recognizing the legal right of people with disabilities to participate in community life.

² *Id.* See also "Emotions run high in Cromwell over mental health group home; 198-signature petition demands group home relocate," Middletown Press, April 21, 2015, available at <https://www.middletownpress.com/news/article/Emotions-run-high-in-Cromwell-over-mental-health-11806567.php> (accessed November 24, 2020).

The Town of Cromwell and its officers did not know any of the people who lived in Valor Home. The Town applied long-held and deeply-seated stereotypes and bigotry against people with mental health conditions as a class. One of the most pernicious stereotypes is that people with mental health conditions are dangerous. Numerous studies and systematic reviews have demonstrated that people with mental health conditions are not significantly more dangerous than people without mental health conditions.³

In *Olmstead v. L.C.*, Justice Ginsburg outlined the Congressional findings that:

“(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

“(3) discrimination against individuals with disabilities persists in such critical areas as . . . institutionalization . . . ;

.....

“(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, . . . failure to make modifications to existing facilities and practices, . . . [and] segregation” 42 U.S.C. § 12101(a)(2), (3), (5).

Olmstead v. L.C. ex rel. Zimring, 527 U.S. 581, 600 (1999)

That town forum reinforced that in 16 years since the *Olmstead* decision, not much had changed. Cromwell residents literally yelled “get out!”; immediately after the town hall meeting, leadership of the town and their counsel conspired to

³ See, e.g., “Harvard Mental Health Letter: Mental Illness and Violence,” January 2011, available at https://www.health.harvard.edu/newsletter_article/mental-illness-and-violence (accessed November 24, 2020) and See M.E. Rueve & R.S. Welton, “Violence and mental illness.” *Psychiatry*, 2008 May, *Psychiatry*, 5(5), 34–46, available at https://www.researchgate.net/publication/26786534_Violence_and_Mental_Illness (accessed November 24, 2020).

violate the civil rights of people with mental health conditions to ensure the elimination of a community residence program, with services funded pursuant to a contract with DMHAS, in the town. That new community residence did open, temporarily. It only ever served two men with disabilities. Because of ongoing hostility exhibited both by residents of the neighborhood and town officials, including rescinding the tax exemption for the program that had been operating for over a decade at 461 Main -- the subject of this dispute -- the community residence on Reiman Road was shut down and the property was sold.

Chief Justice John Marshall, in *McCulloch v. Maryland*, stated that “the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create....” *McCulloch v. Maryland*, 17 U.S. 316, 431 (1819). The Town of Cromwell realized that they could attempt to accomplish their goal -- driving men with disabilities out of their town -- by denying a tax exemption to the operator of a supervised apartment program that includes the provision of mental health services pursuant to a contract with DMHAS. Any interpretation of the tax exemption statute that would allow them to deny such a tax exemption would result in the perpetuation of ongoing discrimination against people with disabilities.

In the *Olmstead* decision, the Supreme Court ruled that it is discrimination in violation of the ADA to require a person to be segregated or institutionalized to receive services when they could be receiving services in a less restrictive setting. *Olmstead v. L.C ex rel. Zimring*, 521 U.S. 581, 597 (1999). The Department of Mental Health and Addiction Services has a policy that

encourages community integration of people with disabilities. The design of the network of care requires the participation of private non-profit providers to provide community-based services. Denying municipal tax exemptions to the private non-profit providers of those mental health services would result in fewer services being available in the community, and more disabled people unnecessarily segregated in state-operated institutions. The United States Department of Justice has opened cases against the state in the past for failure to timely discharge people from state-operated inpatient psychiatric facilities. If fewer community-based services were available in the future because Connecticut cities and towns deny property tax exemptions to operators of supervised apartment programs that include services rendered by contract with the state Department of Mental Health and Addiction Services, this state could be open to additional litigation for civil rights violations.

- 2. Any reading of General Statutes § 12-81 (7) that would permit a municipality to assess property taxes on an operator of a supervised apartment program that includes services rendered by contract with the State Department of Mental Health and Addiction Services for people who suffer from severe mental illness is contrary to the public policy of Connecticut.**

The mission of the State of Connecticut Department of Mental Health and Addiction Services is the promotion of "the overall health and wellness of persons with behavioral health needs through an integrated network of holistic, comprehensive, effective, and efficient services and supports that foster dignity, respect, and self-sufficiency in those we

serve.”⁴ The Department's vision statement ends with this: “each person will have maximal opportunities for establishing, or reestablishing, a safe, dignified, and meaningful life in the communities of their choice.”⁵ In order to accomplish their mission and vision, the Department created a system of care that includes state-operated inpatient psychiatric facilities and a network of care in the community, involving both state-operated programs and a network of private non-profit providers.

CLRP's clients are individuals who are eligible for mental health services from DMHAS. CLRP has a priority of representing clients who are currently inpatients at DMHAS-operated inpatient psychiatric facilities. Those individuals are protected by the Patients' Bill of Rights, (§§ 17a-540 *et seq.*) (PBOR). The goal of most of our clients is to get discharged from the hospital. The rights under the PBOR include the right to discharge planning that begins on admission and the right to meaningful participation in one's treatment plan. (General Statutes § 17a-542.) Connecticut General Statutes §17a-549 states:

(a) *No person shall be denied employment, housing, civil service rank, any license or permit, including a professional license, or any other civil or legal right, solely because of a present or past history of mental disorder, except as so provided by the general statutes (emphasis added).*

If this Court were to decide that the defendant town's interpretation of General Statutes § 12-81(7), denying the municipal property tax exemption to the plaintiffs, is correct (it is not), the result would be to deny disabled people their opportunities for housing and their civil right to participate in community life. That would be a foolish and absurd

⁴ DMHAS Core Values, available at <https://portal.ct.gov/DMHAS/About-DMHAS/Agency/About-DMHAS#corevalues> (accessed November 24, 2020).

⁵ *Id.*

result, against public policy and in violation of the *Olmstead* decision. This Court should reject it.

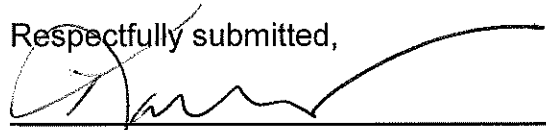
Connecticut, sadly, has a long history of segregation and denial of opportunity to people from marginalized groups. The same suburbs which deny permits for affordable housing developments would deny municipal tax exemptions for “charitable programs that operate supervised apartment programs that include services rendered by contract with the state Department of Mental Health and Addiction Services for men who suffer from severe mental illness.” The denial of opportunity to people with disabilities comes from a place of fear, misperception, bias, and stigma. Unfortunately, decades of “anti-stigma” campaigns by mental health advocates has done little to change people’s views.⁶ The denial of the tax exemption for the property at 461 Main Street, at which Gilead Community Services provided essential services to individuals with psychiatric disabilities, was part of a pattern and practice by the Town of Cromwell to engage in discrimination against individuals with psychiatric disabilities. CLRP urges this court to reject the Town’s interpretation of the statute as contrary to the public policy of the state of Connecticut.

⁶ See, e.g., the discussion of the concept of “public stigma” in P.W. Corrigan & A.C. Watson, “Understanding the impact of stigma on people with mental illness,” World Psychiatry. 2002 Feb; 1(1): 16–20, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1489832/> (accessed November 24, 2020) and A.M. Parscepe & L. J. Cabassa, “Public Stigma of Mental Illness in the United States: A Systematic Literature Review,” Adm. Policy Ment. Health. 2013 Sep; 40(5); 10.1007, available at <https://www.ncbi.nlm.nih.gov/entrez/eutils/elink.fcgi?dbfrom=pubmed&retmode=ref&cmd=prlinks&id=22833051> (accessed November 24, 2020).

CONCLUSION

This Court should affirm the decision of the trial court, which found that the plaintiffs, as a matter of law, fulfilled all the requirements set forth in General Statutes § 12-81(7)(B). This court should find that it was improper action by the Town of Cromwell to deny a municipal property tax exemption to the plaintiffs, who were operators of a supervised apartment program that includes services rendered by contract with the state Department of Mental Health and Addiction Services for men who suffer from severe mental illness.

Respectfully submitted,



Kathleen M. Flaherty, Juris No. 413221
Connecticut Legal Rights Project
CVH – Beers Hall 2nd Floor
P.O. Box 351 – Silver Street
Middletown, CT 06457
(860) 262-5033
(860) 262-5035
kflaherty@clrp.org

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing complies with all of the provisions of the Connecticut Rules of Appellate Procedure § 67-2, as follows:

§67-2(g):

- (1) The electronically submitted brief has been delivered electronically to the last known e-mail address of each counsel of record for whom an e-mail address has been provided; and
- (2) The electronically submitted brief has been redacted or does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law.

§67-2(i):

- (1) A copy of the brief has been sent to each counsel of record and to any trial judge who rendered a decision that is the subject matter of the appeal, in compliance with P.B. § 62-7; and
- (2) The brief being filed with the appellate clerk is a true copy of the brief that was submitted electronically pursuant to P.B. § 67-2(g); and
- (3) The brief has been redacted or does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law; and
- (4) the brief complies with all provisions of this rule.

November 25, 2020



Kathleen M. Flaherty